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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

CONCRETE CORING CO.,  
CONCRETE CUTTING CO., INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85-4

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of the imposition of a civil penalty in the sum of \$250 for a violation of Subsection 9.03(b)(1) of Regulation I of the Puget Sound Air Pollution Control Agency, came on for formal hearing before the Pollution Control Hearings Board; Wick Dufford (presiding) and Lawrence J. Faulk, on March 29, 1985 at Lacey, Washington. Board member Gayle Rothrock later reviewed the record.

1 Appellant, Concrete Coring Co. appeared pro se through its  
2 manager, Roger F. Gossett. Respondent Puget Sound Air Pollution  
3 Control Agency (PSAPCA) appeared by its attorney Keith McGoffin. The  
4 proceedings were reported by Marie Dillon, Court Reporter.

5 Witnesses were sworn and testified. Exhibits were admitted and  
6 examined. Argument was heard. From the testimony, evidence and  
7 argument, the Board makes these

#### 8 FINDINGS OF FACT

##### 9 I

10 Respondent PSAPCA is a municipal corporation with responsibilities  
11 for conducting a program of air pollution prevention and control in a  
12 multi-county area which includes King County. The agency has  
13 submitted a certified copy of its Regulation I. Judicial notice is  
14 taken of that document.

##### 15 II

16 Appellant is a commercial operation in the business of coring and  
17 cutting concrete. Most of the company's work is done on individual  
18 job sites. However, an office and yard is maintained at 19039 Pacific  
19 Highway South where supplies are kept and equipment may be serviced.  
20 The company has been located at this site for nearly twenty years.  
21 Approximately a year ago, a motel was constructed on an adjacent lot.

##### 22 III

23 On the morning of October 24, 1984, Concrete Coring rented a small  
24 sandblaster and brought it back to the company's yard in order to

25 FINAL FINDINGS OF FACT,  
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1 clean the bed and body of one of the company's trucks. It was a balmy  
2 day and the employee detailed to the sandblasting job undertook the  
3 operation out-of-doors in view of the adjacent motel.

4 IV

5 In response to an anonymous complaint, PSAPCA's inspector arrived  
6 on the scene and observed the sandblasting. What he saw was a dust  
7 plume 15-20 feet high spreading out 10-15 feet in all directions.  
8 Within this small cloud, the opacity ranged between 50 and 80 percent  
9 over a six minute observation period.

10 V

11 After making his observations, PSAPCA's inspector wrote a Notice  
12 of Violation on the scene and delivered it immediately to appellant's  
13 manager, Mr. Gossett, at the office. There followed an angry exchange  
14 between the two.

15 VI

16 On December 28, 1984, PSAPCA issued to Concrete Coring a civil  
17 penalty in the amount of \$250 for exceeding the agency's opacity  
18 standard during the sandblasting on October 24, 1984. On January 7,  
19 1985, this Board received Concrete Coring's appeal.

20 VII

21 The recently constructed motel does not fit in compatibly with the  
22 noise, dust and activity normal to appellant's business. Since the  
23 motel was constructed, complaints--unknown in the past-have become  
24 common.

25  
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1 Appellant has occasionally in the past rented sandblasters to  
2 prepare equipment for painting. There has never been a complaint  
3 about sandblasting before and the company was unaware that its  
4 operation of this commonly-available rental equipment violated any law.

5 VIII

6 As a matter of policy, PSAPCA does not issue a warning when a  
7 violation of the regulations is detected. It routinely issues a  
8 Notice of Violation. A civil penalty, however, is not assessed in  
9 every case. The agency evaluates each violation to determine whether  
10 to impose a civil penalty. Both the nature and circumstances of the  
11 violation and the past record of the alleged violator are considered.  
12 PSAPCA views the civil penalty not as merely punitive but as an  
13 instrument for changing behavior.

14 IX

15 In the instant case, there is no evidence of harm. The operation  
16 was small-scale, limited to one truck, and confined to appellant's  
17 property. The cloud of particulates was of minor size; it became too  
18 diffused to be visible 15 or 20 feet from its source. The winds were  
19 calm. Neither the fact nor the likelihood of injury to humans or  
20 other living things or of unreasonable interference with the enjoyment  
21 of life and property were demonstrated.

22 X

23 This case presents the first air pollution citation ever written  
24 for the appellant company. The manager testified that, having learned  
25

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1 about the possibility of opacity violations, the company will conduct  
2 any future sandblasting under cover. No violations of the opacity  
3 standard or any other of PSAPCA's regulations have been recorded by  
4 the agency since the event at issue.

5 XI

6 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
7 adopted as such.

8 From these Findings, the Board came to these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over the issues and the parties.

12 II

13 Appellant does not contest the fact of violation, but feels that  
14 under the circumstances, the penalty is unreasonable.

15 III

16 The Board concludes that PSAPCA Regulation I, Section 9.03(6) was  
17 violated by appellant's sandblasting operation on October 24, 1984.

18 IV

19 In light of all the circumstances, however, the Board concludes  
20 that no valid reason has been shown for the assessment of more than a  
21 nominal penalty.

22 The nature of the violation is a minor infraction of a standard,  
23 principally applied to stack emissions of much greater volume. No  
24 ambient air particulate problem in the area was shown; nor was there

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1 anything else in the circumstances which might legitimately lend  
2 gravity to the offense. Moreover, it was a first-time violation,  
3 unrepeatd since, and the violator has indicated an intention and an  
4 ability to conduct his operations in the future in a manner which will  
5 avoid such problems.

6 An appropriate penalty would be \$25. Such penalty, however,  
7 should be suspended on condition that appellant commit no future  
8 violations of Section 9.03(b) for the next year.

9 V

10 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
11 adopted as such.

12 From these Conclusions, the Board enters this  
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ORDER

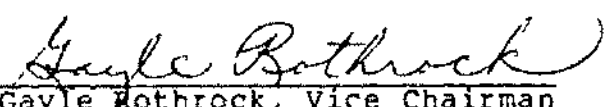
The violation asserted by PSAPCA's Notice and Order of Civil penalty No. 6191, issued on December 28, 1984, to Concrete Coring Company is affirmed. The penalty assessed in such notice is vacated as to the amount in excess of \$25. A penalty of \$25 is affirmed, but is hereby suspended on condition that appellant commit no future violations of PSAPCA Regulation I, Section 9.03(b) for one year from the date of this order. If this condition is met, the penalty shall be removed from PSAPCA's records of outstanding fines. If the condition is not met, the penalty shall become due and shall be paid.

DONE this 5th day of April, 1985.

POLLUTION CONTROL HEARINGS BOARD

  
WICK DUFFORD, Lawyer Member

 4/5/85  
LAWRENCE J. FAULK, Chairman

  
Gayle Rothrock, Vice Chairman

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